



STATE OF INDIANA

DEPARTMENT OF FINANCIAL INSTITUTIONS

30 South Meridian Street, Suite 300
Indianapolis, Indiana 46204-2759
Telephone: (317) 232-3955
Facsimile: (317) 232-7655
Web Site: <http://www.in.gov/dfi>

Constance J. Gustafson
General Counsel
email: cgustafson@dfi.in.gov

2015 GENERAL ASSEMBLY - LEGISLATION OF INTEREST-UPDATED

Prepared by Constance J Gustafson, General Counsel

June 23, 2015

The following are legislation adopted by the General Assembly in the 2015 session which we thought would be of interest to the department, its constituencies, staff and members. These are brief summaries and are by no means a comprehensive explanation of the bills. We recommend a complete review of any bill of particular interest. A complete list of all legislation enacted or considered in the 2015 General Assembly can be found at the following link:

<http://iga.in.gov/legislative/2015/bills/> or by going to the Indiana General Assembly web site.

PLEASE NOTE: Previous summary inadvertently omitted amendments to IC 24-4.5-2-204 and IC 24-4.5-3-204 relating to deferral charges. See page 3 below for description of amendments.

HB 1002 Ethics. Effective July 1, 2015. While much of the bill deals with new ethics provisions relating to legislators and amendments to lobbyist laws, there are significant revisions to the ethics laws affecting state employees, state officials and special state appointees (sometimes referred to in this summary as "state persons"), particularly relating to post-state employment work, conflicts of interest and use of state materials, equipment and facilities. This summary will focus on the amendments to the ethics laws affecting state employees, state officials and special state appointees:

- **IC 4-2-6-9 Conflict of economic interests**

The 2015 amendment adds a new provision which allows a state person who identifies a potential conflict of interest to file a written disclosure statement with the ethics commission that, among other things, describes the implementation of a screen (commonly referred to as a "Chinese wall") established by the ethics officer. The written disclosure filed under this provision must be posted on the inspector general's web site.

- **IC 4-2-6-10.5 Prohibition against financial interest in contract; exceptions**

Due to an amendment in 2015, the prohibition against a state person having a financial interest in an agency contract does not apply to a state person who files a written statement with the inspector general before executing the agency contract which contains, among other things, an affirmation that the state person did not participate in or have contracting responsibility for the agency, a full disclosure of all related financial interests, a statement indicating that the contract can be performed without compromising the performance of the

state person's official duties and, in the case of a contract for professional services, an affirmation by the agency that no one else on staff is available to perform those services.

- Failure to file a statement or filing a deficient statement is subject to a civil penalty of not more than \$10 for each day the statement remains delinquent or deficient up to a maximum penalty \$1,000.

- **IC 4-2-6-11 One year restriction on certain employment or representation; advisory opinion; exceptions**

The section prohibiting acceptance of certain employment until 365 days have elapsed has been substantially revised and clarified.

- A 2015 amendment to **subsection (f)** provides that the 365 day prohibition does not apply to a state person who did not negotiate any contracts with the potential employer in the preceding two years before termination of state employment or contracts negotiated in the preceding two years are no longer in effect.
- A 2015 amendment to **subsection (g)** provides a waiver may be obtained on a case by case basis from the commission allowing acceptance of employment before the 365 days have elapsed if the commission finds, among other things, whether the prospective employment may be beneficial to the state or the public and the extent of economic hardship to the employee if the request for a waiver is denied.
- Another 2015 amendment in **subsection (i)** addresses a situation that would otherwise be a violation of the 365 day prohibition and apparently addresses a situation in which a former state employee as a non-employee is able to obtain insurance or other benefits from a trade association or other industry organization. Specifically, this provision allows a former state person who “forms a sole proprietorship or a professional practice and engages in a business relationship with an entity that would otherwise violate this section” to file a disclosure statement with the commission not later than 180 days after separation from state service certifying that the former state person is not an employee of the entity and stating in detail the treatment of taxes, insurance, and any other benefits between the entity and the former state person.
- **IC 4-2-6-17 Unauthorized use of state property**
This is a new section adopted in 2015 to provide that a state person may not use state materials, funds, property, personnel, facilities, or equipment for purposes other than official state business unless the use is expressly permitted by a general written agency, departmental, or institutional policy or regulation that has been approved by the commission.
- The commission may withhold approval of a policy or rule that violates the intent of Indiana law or the code of ethics, even if Indiana law or the code of ethics does not explicitly prohibit that policy or rule.
 - An individual who violates this provision is subject to action under IC 4-2-6-12 which includes, among other things, imposition of civil penalties; reprimand, suspension, or termination of employment and barring a person from future state employment.
- **IC 4-2-7-5 Code of ethics; filing ethics complaint** A 2015 amendment provides that the code of ethics adopted by the inspector general must prohibit:
(1) A state person from using state materials, funds, property, personnel, facilities, or equipment for a political purpose, and

(2) Adoption of policies or regulations that authorize a state person to use state materials, funds, property, personnel, facilities, or equipment for a political purpose.

HB 1015 Benefit corporations. Effective January 1, 2016. This bill adds a new Article 1.3 to Title 23 permitting the formation of a for profit corporation as a benefit corporation.

- Allows a benefit corporation to incorporate for:
 - a general public benefit (i.e. "...a material positive impact on society and the environment, taken as a whole, assessed against a third party standard, from the business and operations of a benefit corporation....") or
 - a specific public benefit (i.e. "a benefit that serves:(1) one (1) or more public welfare, religious, charitable, scientific, literary, or educational purposes; or (2) other purposes or benefits beyond the strict interests of the shareholders of the benefit corporation....")

HEA 1287 Financial institutions and trade regulation (commonly known as the "DFI Omnibus Bill"). The following is a brief summary of HEA 1287 which was signed by the Governor on May 5, 2015. It contains mostly clarifications and corrections of changes made in previous years. All provisions become effective July 1, 2015.

The following are significant provisions of HEA 1287:

- IC 4-32.2-1-1; 24-8-1-1; 35-45-5-7 and 35-45-5-13: Extends prize-linked savings programs (which were adopted in 2014 for credit unions) to national banks, state banks and savings associations following the adoption by Congress of the American Savings Program Act in December, 2014.
- IC 23-15-8-5 and 28-1-22-1.5: Adds new provisions allowing an "eligible institution" to voluntarily file with the Indiana Secretary of State a notice stating its registered agent and office. Eligible institutions are national, foreign or state banks, savings banks, trust companies, corporate fiduciaries, credit unions, industrial loan and investment companies, or savings that are domiciled in Indiana. Since they are not required to register with the Secretary of State, these amendments address a problem affecting national banks domiciled in Indiana which often finds that litigation against their organization is served upon the wrong entities within their corporate organization. This voluntary provision allows these national banks to place on file with the Secretary of State the entity which would be appropriate to serve process upon in the event of litigation against the organization.
- IC 24-4.5-2-204 and IC 24-4.5-3-204: Clarifies the language to confirm that a deferral of an unpaid installment cannot exceed maximum rate.
- IC 24-4.5-3-501.5; 24-4.5-3-502 and 24-4.5-3-502.1: Clarifies that non-mortgage consumer loans, subordinate lien mortgage loans and small loans (aka payday loans) each require a separate license.
- IC 24-4.5-7-102: Clarifies that a person is regularly engaged and must obtain a small loan (aka payday loan) license if the person makes one or more small loans in a year. This provisions distinguishes payday loans from consumer credit transactions which provides that a person making at least 25 unsecured consumer loans or sales or at

- least 5 consumer loans or sales secured by a mortgage is regularly engaged and must obtain a consumer credit license.
- IC 24-4.5-7-401: Payday lenders may not compel a consumer to pay money before allowing the consumer to enter into extended payment plan. DFI field staff recommended this addition to the law based upon experiences in the field.
 - IC 24-7-5-11 has been amended to allow rental purchase companies to increase the liability waiver fee from a flat \$2.00 to the greater of 10% of the lease payment or \$2.
 - IC 28-1-20-4: Updates the naming conventions for financial institutions to prohibit the use of variations on the word "bank" if they would create a substantial likelihood of misleading the public.
 - IC 28-7-1-17: Updates the information required to be placed in the credit union's loan file. While the requirement that a title policy must be obtained has been deleted from the statute credit unions in keeping with the loan policies adopted by each credit union are still required to obtain title insurance in connection with mortgage loans. In connection with this revision of the statute there is also the acknowledgement by the department that some circumstances should permit the credit union to use discretion as to whether another title policy is necessary. For example, a credit union might decide to dispense with an updated title policy in a refinance of the property on which there is no mortgage.
 - IC 28-7-1-18: Extends the requirement that the DFI examination for federal credit unions converting to state credit union must be made not later than 75 days instead of 30 days of receiving certified copies of minutes authorizing a conversion.

HEA 1302 Expungement. Effective July 1, 2015. Substantial revisions to the law on expungement have been adopted in the 2013 and 2014 legislative sessions. The changes in 2015 are largely "tweaking" the efforts of the past two years.

- Provides that expungement provisions concerning an arrest that does not lead to a conviction also apply to criminal charges or juvenile delinquency allegations that do not lead to a conviction.
- Specifies that a person who files for expungement of an arrest, charge, or juvenile delinquency adjudication that did not lead to a conviction or juvenile delinquency adjudication may file the petition in a circuit or superior court.
- Provides that, if a court has no discretion in granting an expungement petition, the prosecuting attorney is not required to inform the victim of the victim's rights.
- Provides that a person convicted of: (1) two or more felony offenses involving the unlawful use of a deadly weapon; (2) that were not committed as part of the same episode of criminal conduct; may not have the person's convictions expunged.

HEA 1403 Regional cities. Effective upon passage. This project is one of particular interest of Governor Pence. Originally a portion of the funding was to come in part from the use of the Financial Institutions Funds established under IC 28-11-2-9. This source of funding (as well as other sources) was abandoned in favor of \$84 million from a newly established tax amnesty program.

- Establishes the Indiana regional city fund (fund) to provide grants and loans to regional development authorities.
- Provides that the Indiana economic development corporation administers the fund.
- Provides that when the board awards a grant or makes a loan from the fund, the Indiana finance authority, upon request of the board, may determine that part of the grant or loan shall be made from the environmental remediation revolving loan fund under certain circumstances.

HEA 1539 Securities. Effective July 1, 2015. Administrative orders will be issued and hearings conducted under the Administrative Orders and Procedures Act established under IC 4-21.5 *et al.*

- Removes a provision that provides that IC 4-21.5 *et al.* (laws governing administrative orders and proceedings) does not apply to certain provisions regulating loan brokers.
- Provides that IC 4-21.5 *et al.* (laws governing administrative orders and proceedings) and any rules of practice adopted by the securities division are applicable to administrative proceedings under the uniform securities act. (Current law provides that IC 4-21.5 *et al.* is not applicable to administrative proceedings under the uniform securities act.) Makes a correction.

SEA 282 Unclaimed property act and savings bonds. Effective July 1, 2015.

- Provides that, for purposes of the law concerning unclaimed property, United States savings bonds are presumed abandoned three years after the date the bonds stop earning interest.
- Requires the attorney general to: (1) collect any United States savings bonds escheated to the state, including any proceeds from the bonds; and (2) transfer all money received to the treasurer of state for deposit in the abandoned property fund.
- Allows a person who wishes to make a claim for a United States savings bond escheated to the state to file a claim with the attorney general.

SEA 355 Various probate and trust matters. Effective July 1, 2015.

- Provides that a trust may incorporate by reference a document that exists at the time the trust is executed.
- Specifies that funeral expenses and expenses of a tombstone are expenses of administration.
- Provides that a non-probate transfer to a testamentary trust: (1) is valid upon the will being admitted to probate; and (2) is not subject to claims against the probate estate.
- Allows a governmental entity or business entity (in addition to an individual) to be a transfer on death beneficiary of an automobile or a watercraft.
- Allows a governmental entity or business entity (in addition to an individual) to be appointed a health care representative.
- Provides that a power of attorney may delegate the authority of a parent or guardian with respect to the health care of a minor or protected person.
- Provides that an attorney in fact is entitled to judicial review and settlement of an account.

- Provides that absent fraud, misrepresentation, inadequate disclosure, or failure to provide proper notice, an attorney in fact is discharged from all liability as to the transactions in the accounting if proper notice is provided of the court's approval of the accounting.

SEA 415 Vacant and abandoned housing. (Consult bill for effective dates.)

- Provides that a county, city, or town fiscal body may adopt an ordinance to establish a deduction period for rehabilitated property that has also been determined to be abandoned or vacant.
- Specifies that there must be delinquent property taxes or special assessments on real property before it may be sold by the county treasurer as abandoned or vacant property.
- Eliminates the concept of redemption after sale regarding abandoned or vacant property to be sold by the county treasurer.

SEA 425 Unclaimed life insurance benefits. Effective July 1, 2015.

- Requires the department of insurance to develop, post, and maintain on the Internet information concerning life insurance and financial affairs.
- Specifies that the law concerning unclaimed life insurance benefits: (a) applies to policies, annuities, and retained asset accounts issued after June 30, 2015; and (b) does not prevent the attorney general from performing certain examinations of life insurance company records.

SEA 447 Management of funeral trust accounts. Effective July 1, 2015.

- Provides that the bank, trust company, savings association, or credit union that receives the payments made by the settlor of a funeral trust may enter into a contract under which the settlor's account will be managed by a third party.
- Requires that the third party be an investment adviser registered with the United States Securities and Exchange Commission or with the Indiana securities commissioner.
- Requires an investment adviser managing a funeral trust settlor's account to comply with the Indiana Uniform Prudent Investor Act.

SEA 487 Business and other associations. Most provisions are effective July 1, 2015; however some are effective July 1, 2016.)

- Makes changes to business and other association laws concerning the following:
 - Requirements regarding filings and fees for certain filings with the office of the secretary of state.
 - Meetings of shareholders of corporations, including notice requirements.
 - Merger of a parent corporation with a wholly owned subsidiary of the parent corporation.
 - Administrative dissolutions.

Bills that failed to pass:

SB 373 and HB 1340 Lawsuit lending: There were several bills we watched closely due to their potential impact on our office. SB 373 and HB 1340 dealt with "civil proceeding advance payment transactions" and were frequently referred to as lawsuit lending. For the fifth consecutive year bills to place this industry into a regulatory scheme failed to pass both houses. While the department was neutral on the merits of the bills we were adamant that since the bills specifically excluded these transactions from the scope of the UCCC we did not have the resources or expertise to provide regulatory oversight of this industry.

HB 1351 Limitations on agency's ability to issue rules, guidelines, standards, or other policies: This bill, which did not pass, would have required the legislative services agency to review proposed and adopted agency rules, guidelines, standards or other policies except those based upon a federal requirement or specific statutory authority.

SB 211 Debt Buyers: This bill would provided for increased regulation of debt buyers in Indiana; however, by the time an agreement over use of the term "charged off" was worked out with the bankers association the bill was dead.